

**BOARD OF ADJUSTMENT  
OFFICIAL MINUTES  
November 19, 2007**

**Members Present:**

Michael Villyard  
Michael Gallagher  
Ed Hardemon  
Helen Dutmer  
George Alejos  
Paul Klein  
Mary Rogers  
Andrew Ozuna  
Gene Camargo  
Maria D. Cruz  
Mimi Moffat

**Staff:**

Rod Sanchez, AICP, Director  
Fernando De Leon, P. E., Asst. Dir.  
Ted Murphree, Asst. City Attorney  
Christopher Looney, Planning Manager  
Rudy Niño, Jr., Senior Planner  
David Arciniega, Planner  
Chris Garcia, Sr. Planner, Plng & Com Dev  
Jennifer Gallegos, EIT, Sr. Eng. Associate  
Kathy Rodriguez, Planner, Plng & Com Dev

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**Call to Order**

Pledge of Allegiance to the U.S. and Texas Flags.

Mr. Villyard, Chairman, called the meeting to order and called roll of the applicants for each case.

David Arciniega, Planner, stated Case No. A-08-011 was continued until December 3, 2007 as per the applicant's request.

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**CASE NO. A-07-097PP**

Applicant – Herminia Pachecano

Lot 30, the east 12.5 feet of Lot 29 and the west 22.5 feet of Lot 31, Block 38, NCB 1847  
1133 West Woodlawn Avenue

Zoned: "R-6 NCD-5" Residential Single-Family, Beacon Hill Neighborhood Conservation District

The applicant is requesting a 1) a 30-foot variance from the requirement that with the Beacon Hill Neighborhood Conservation District, carports shall be located a minimum of 5 feet behind the primary residence's front façade, in order to keep an existing carport that extends 25 feet in front of the primary residence's front façade, and 2) a complete variance from the requirement that a minimum 5-foot side setback be maintained in "R-6" Zoning Districts, in order to keep the same carport on the side property line.

David Arciniega, Planner, presented background and staff's recommendation of denial of both variances. He indicated 24 notices were mailed, 4 notices were returned in favor and 2 notices were returned in opposition and the Beacon Hill Neighborhood Conservation District is in opposition.

Chris Garcia, Planner, stated that it does not meet standards. He stated the carport could be put in the backyard. He also further stated they removed more than 50% of the structure.

Gloria Flores, representative, stated that this request is a repair and not a new construction of the carport for the purpose of protection for her handicapped nephew.

**The following citizen(s) appeared to speak:**

Dora Puente, citizen, spoke in favor.

Dominic Puente, citizen, spoke in favor.

Philip Marzec, representative for Beacon Hill Neighborhood Association, spoke in opposition. He stated they have been in contact with Ms. Pachecano.

Everyone present for or against having been heard and the results of the written notices having been received, the Chair declared the public hearing of Case No. A-07-097PP closed.

**MOTION**

A motion was made by **Mr. Camargo** to be move Case No. **A-07-097PP**, a request by **Herminia Pachecano**, on property whose legal description is **Lot 30, the east 12.5 feet of Lot 29 and the west 22.5 feet of Lot 31, Block 38, NCB 1847**, also known as **1133 West Woodlawn Avenue**, be granted a variance to construct a carport on the above reference property that will be located within the front setback of the described property in line with the porch that currently exists and attached to the front of the residence. Such variance will not be contrary to the public interest in that the majority of the notices that were returned were in favor and it states for the record that the neighborhood association is willing to comprise on something less than that what has been intially requested and although has been recognized that this has not been taken back to the full membership of the association this member gets the impression that perhaps it will be something that would be acceptable. Due to special conditions, literally enforcement of the ordinance would result in unnecessary hardship in that it has been shown although not in compliance with regulations there has been in existence a carport on this property that extended out to the front property line and that far exceeded that which is being recommended in this variance. So that the spirit of the ordinance is observed and substantial justice is done in that **granting the approval of this variance will still require that the applicant comply with other design regulations that are imposed by the Neighborhood Conservation District**. Such variance will not authorize the operation of a use other than those uses specifically authorized for the district in which the property for which the variance is sought is located in that **the proposed use of this structure is one that is permitted in the residential zone classification that this property carrries**. Such variance will not substantially or permanently injure the district in

which the variance is sought in that **the construction of a structure in accordance with the motion will be much less in violation of the regulation and the structure that has existed for a number of years.** Such variance will not alter the essential character of the district in which the variance is sought in that **these were permitted uses up until the adoption of the NCD.** Such variance will be in harmony with the spirit and purpose of this chapter in that **the board has been given the authority to grant such deviations from the regulations when warranted.** The plight of the property owner for which the variance is sought is due to unique circumstances existing on the property and not personal in nature or self-created, and are not merely financial, and are not due to or the result of the general conditions in the district in which the property is located it **has been stated here by the applicants representative that they had initiated contracted with an individual to perform the work and it is my assumption that the proeprty owner felt that the contractor that originally proposed this was aware of the regulations and the appropriate permits etc. that would have been taken.** I feel that the **propery owner relied on good faith on someone elses proposal and therefore we are here at this stage or this predicatment due to that situation.** The variance will not substantially weaken the general purposes of this chapter of the regulations herein established for the specified district in it is felt in **certain instances situations such as this come up in Neighborhood Conservation Districts where which a Board of Adjustment must in my opnion grant a variance to alleviate a problem that arises on indiviual properties.** The variance will not adversely affect the public health, safety or welfare of the public in that **permits will be taken for this construction if this variance is granted to ensure the safety of the construction.** The motion seconded by Ms. Dutmer.

**AYES: Camargo, Dutmer, Ozuna, Cruz, Klein, Alejos, Hardemon, Rogers, Gallagher**

**NAY: Moffat, Villyard**

**THE VARIANCE WAS GRANTED AS AMENDED.**

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**CASE NO. A-08-006**

Applicant – City of San Antonio

Lots 8, 9, 10 and the south part of Lots 11, 12, 13, 14 and 15, NCB 161

106 West Market Street

Zoned: “D HE RIO-3” Downtown Historic Exceptional, River Improvement Overlay District 3

The applicant is requesting a 13-foot, 5-inch variance from the maximum 20-foot front setback required in the “D” Downtown zoning district, in order to build a structure 33 feet, 5-inches from the front property line.

David Arciniega, Planner, presented background and staff’s recommendation of approval of this variance. He indicated that there were 25 notices mailed, 2 notices were returned in favor and 0 notices were returned in opposition and no response from the Downtown Neighborhood Association.

Kim Monroe, representative, stated they have consensual approval from HDRC. He further stated that they will be building a fence around the property which is one of the stipulations asked by City of San Antonio.

### No citizens to speak

Everyone present for or against having been heard and the results of the written notices having been received, the Chair declared the public hearing of Case No. A-08-006 closed.

### MOTION

A motion was made by **Mr. Gallagher** reference Appeal Case No. **A-08-006**, variance application for **13-foot 5-inch variance from maximum 20 foot front setback required in the "D" Downtown Zoning District in order to build a structure 33 feet 5 inches from the front property line**, Legal Description being **Lots 8, 9, 10 and the south part of Lots 11, 12, 13, 14, and 15, NCB 161, the address being 106 West Market Street**. I move that the Board of Adjustment grant the applicants request regarding Appeal No. **A-08-006**, application for a variance to the subject property as described above, because the testimony presented to us, and the facts that we have determined, show that the physical character of this property is such that a literal enforcement of the provisions of the Unified Development Code, as amended, would result in an unnecessary hardship. Specifically we find that such variance will not be contrary to the public interest in that **it seems to be consistent with the traditional downtown development**. Due to special conditions, literally enforcement of the ordinance would result in unnecessary hardship in that **they are dealing with the meandering San Antonio River through downtown**. So that the spirit of the ordinance is observed and substantial justice is done in that **this would assist in the historical construction of buildings in this area**. Such variance will not authorize the operation of a use other than those uses specifically authorized for the district in which the property for which the variance is sought is located in that **this variance is designated for this specific property**. Such variance will not substantially or permanently injure the district in which the variance is sought in that **according to the staff it would meet the intent of the UDC in that the request would allow for the proposed structure to conform to the setbacks of the existing structure on the lot which is 30 feet 5 inches from the property line**. Such variance will not alter the essential character of the district in which the variance is sought in that **we heard testimony today that it actually would be build in a manner that would be complimentary to the historical structures in the area**. Such variance will be in harmony with the spirit and purpose of this chapter in that **it would have a minimal impact on the surrounding commercial properties**. The plight of the property owner for which the variance is sought is due to unique circumstances existing on the property and not personal in nature or self-created, and are not merely financial, and are not due to or the result of the general conditions in the district in which the property is located in that **due to the configuration of the subject tract on the banks of the San Antonio River this would be an appropriate sort of construction**. The variance will not substantially weaken the general purposes of this chapter of the regulations herein established for the specified district in that **it meets the propose size in scale which are consistent with the immediate surrounding areas**. The variance will not adversely affect the public health, safety or welfare of the public in that **it**

is not having it design features which could cause harm to the public. The motion seconded by Mr. Klein.

**AYES:** Gallagher, Klein, Ozuna, Cruz, Dutmer, Rogers, Moffat, Camargo, Alejos, Hardemon, Villyard

**NAY:** None

**THE VARIANCE WAS GRANTED.**

**Board Members took a 15 minute recess.**

**CASE NO. A-08-007**

Applicant – Joaquin Garcia  
Lot 3, Block 26, NCB 16039  
5538 Red Sky Drive  
Zoned: "R-6" Residential Single-Family District

The applicant is requesting a 1) a 1-foot, 6-inch variance from the requirement that predominantly open fences in front yards be no taller than 4 feet, in order to keep an existing 5-foot, 6-inch tall predominantly open fence in the front yard, 2) a 2-foot variance from the requirement that solid screen fence in the front yards be no taller than 3 feet, in order to keep an existing 5-foot tall solid screen fence in the front yard, 3) a 2-foot variance from the requirement that clear vision areas be free of visual obstructions which are higher than three feet above the pavement, in order to allow a 5-foot tall solid screen fence to encroach into the clear vision area of abutting driveways in the front yard, and 4) a 2-foot, 6-inch variance from the requirement that clear vision areas be free of visual obstructions which are higher than three feet above the pavement, in order to allow a 5-foot, 6-inch tall predominantly open fence to encroach into the clear vision area of abutting driveways in the front yard.

David Arciniega, Planner, presented background and staff's recommendation of denial of all the variances requested. He indicated that 40 notices were mailed, 1 notice was returned in favor and 0 notices were returned in opposition and no response from Hidden Cove and Hidden Valley Neighborhood Associations.

Jennifer Gallegos, Senior Engineering Associate, stated the fence would need to be removed because of the clear vision area.

Joaquin Garcia, applicant, stated he is requesting variance for protection on his property. There have been numerous break-ins at his residence.

**No citizens to speak**

Everyone present for or against having been heard and the results of the written notices having been received, the Chair declared the public hearing of Case No. A-08-007 closed.

**NO MOTION WAS MADE.**

**THE VARIANCE WAS NOT GRANTED.**

**CASE NO. A-08-008**

Applicant – Elva Arteaga

Lot 16, Block 14, NCB 1814

519 West Huisache

Zoned: “R-6 NCB-2” Residential Single-Family District, Alta Vista Neighborhood Conservation District

The applicant is requesting a 2:12 minimum roof pitch variance from the requirement that, within the Alta Vista Neighborhood Conservation District, a roof with a five inch rise for every horizontal foot be required (5:12 min), in order to keep a roof pitch at 3:12 minimum to 4:12 minimum for every horizontal foot.

David Arciniega, Planner, presented background and staff's recommendation of denial of this variance. He indicated that there were 31 notices mailed, 0 notices were returned in favor and 0 notices were returned in opposition and no response from the Alta Vista Neighborhood Association.

Chris Garcia, Senior Planner, stated the applicant was cited in 2004 for the gables and it has not been corrected today. He also stated that the appropriate permits were not pulled for some of the construction that was done.

Elva Arteaga, applicant, stated it was her architects error that she didn't know there was a conservation district overlay at the time of construction. She further stated a lower pitch roof conserves energy in the attic space and for the safety for the company that annually clean the skylights on the very top roof. She was also under the impression that she had a permit.

**No citizens to speak**

Everyone present for or against having been heard and the results of the written notices having been received, the Chair declared the public hearing of Case No. A-08-008 closed.

**MOTION**

A motion was made by **Ms. Rogers** regarding Appeal No. **A-08-008**, variance application for a **2:12 minimum roof pitch variance from the requirement that, within the Alta Vista Neighborhood Conservation District, a roof with a five inch rise for every horizontal foot be required (5:12 min), in order to keep a roof pitch at 3:12 minimum to 4:12 minimum for every horizontal foot**, Subject Property Description Lot 16, Block 14, NCB 1814, located at **519 West Huisache Avenue**, applicant **Elva Arteaga**. I move that the Board of Adjustment grant the applicants request regarding Appeal No. **A-08-008**, application for a variance to the

subject property as described above, because the testimony presented to us, and the facts that we have determined, show that the physical character of this property is such that a literal enforcement of the provisions of the UDC, as amended, would result in an unnecessary hardship. Specifically we find that such variance will not be contrary to the public interest in that **will not alter the overall appearance or adversely affect the character of the area in any way.** Due to special conditions, literal enforcement of the ordinance would result in unnecessary hardship in that **due to the design of the original house in conjunction with the driveway a special condition exists which is not in code compliance.** So that the spirit of the ordinance is observed and substantial justice is done in that **it will comply with surrounding structures and that the applicant has done a great job in rehabbing this home.** Such variance will not authorize the operation of a use other than those uses specifically authorized for the district in which the property for which the variance is sought is located in that **it is a single family residence and will remain a single family residence.** Such variance will not substantially or permanently injure the district in which the variance is sought in that **the variance will not have a negative impact on the neighborhood or the surrounding area.** Such variance will not alter the essential character of the district in which the variance is sought in that **the proposed structures in keeping with the surrounding area and is in fact very ecstatically pleasing enhancing the value of the property and the neighborhood.** Such variance will be in harmony with the spirit and purpose of this chapter in that **the proposed structure will maintain the quality as a matter of fact increase the quality of the surrounding area.** The plight of the property owner for which the variance is sought is due to unique circumstances existing on the property and not personal in nature or self-created, and are not merely financial, and are not due to or the result of the general conditions in the district in which the property is located in that **it will enhance the overall community.** The variance will not substantially weaken the general purposes of this chapter of the regulations herein established for the specified district in that **the proposed variance will not weaken the overall zoning plan of this area.** The variance will not adversely affect the public health, safety or welfare of the public in that **the proposed structure will not in any way create or cause any adverse affect to the general public and a lower pitch of this roof will in fact conserve energy and assist the homeowner in cleaning debris and so forth.** Permits will be taken and inspections made to ensure safety of the construction of this building. The motion seconded by Ms. Cruz.

**AYES: Rogers, Cruz, Ozuna, Camargo, Alejos, Klein, Gallagher**

**NAY: Moffat, Hardemon, Dutmer, Villyard**

**THE VARIANCE WAS NOT GRANTED.**

**Board Members took a 10 minute recess.**

**CASE NO. A-08-010**

Applicant – Ray C. and Joann Almaguer  
Lot 10, Block 12, NCB 7399  
222 West Emerson Avenue  
Zoned: “R-6” Residential Single-Family District

The applicant is requesting a 16-foot variance from the Unified Development Code requirement that a minimum 20-foot front setback be maintained for front entry carports, in order to keep an existing carport 4 feet from the front property line.

David Arciniega, Planner, presented background and staff's recommendation of denial of this variance. He indicated that there were 25 notices mailed, 5 notices were returned in favor and 1 notice was returned in opposition.

Joann Almaguer, applicant, stated their carport is not a new construction and that it was just a repair. The old wood was replaced with new wood. She also stated she wanted protection for their vehicles and for insurance purposes.

Ray C. Almaguer, applicant, stated the reason they are requesting this variance is because he has disabilities. He also stated he was under the impression that the contractor had pulled the permits.

**The following citizen(s) appeared to speak:**

Christine Gutierrez, council aide for Councilwoman Ms. Galvan, spoke in favor. She stated she had a letter written by Ms. Lourdes Galvan stating she was in favor of the carport and she wants the Board of Adjustment to vote for approval of carport.

Rosie C Padilla, citizen, spoke in favor. She stated the Almaguers did hire a contractor to do the repairs. She also stated they did not know the contractor did not pull the required permits.

Mary H Perez, citizen, spoke in favor.

Lucy Villarreal, citizen, spoke in favor.

Everyone present for or against having been heard and the results of the written notices having been received, the Chair declared the public hearing of Case No. A-08-010 closed.

**MOTION**

A motion was made by **Mr. Gallagher** regarding Reference Appeal Case No. **A-08-010**, variance application for **a 16-foot variance from the UDC requirement that a minimum 20-foot front setback be maintained for front entry carports, in order to keep an existing carport 4 feet from the front property line**, the property more fully described as **Lot 10, Block 12, NCB 7399**, the address being **222 West Emerson Avenue**. I move that the Board of Adjustment grant the applicants request regarding Appeal No. **A-08-010**, application for a variance to the subject property as described above, because the testimony presented to us, and the facts that we have determined, show that the physical character of this property is such that a literal enforcement of the provisions of the Unified Development Code, as amended, would result in an unnecessary hardship. Such variance will not be contrary to the public interest in that **there is a basic medical need for this carport**. Due to special conditions, literally enforcement of the ordinance would result in unnecessary hardship in that **four of the members of the family**



**we heard today are suffering health related injuries and conditions which require them to be under a carport when they need it. So that the spirit of the ordinance is observed and substantial justice is done in that there are other similar carports in the neighborhood. Such variance will not authorize the operation of a use other than those uses specifically authorized for the district in which the property for which the variance is sought is located in that this variance is designated for this specific property and none other. Such variance will not substantially or permanently injure the district in which the variance is sought in that by voting for this we only vote to approve this one and will not necessarily change the entire neighborhood. Such variance will not alter the essential character of the district in which the variance is sought in that as we heard from the evidence there is evidence of carports like this one in the local area. Such variance will be in harmony with the spirit and purpose of this chapter in that we have determined that many many neighbors support it. The plight of the property owner for which the variance is sought is due to unique circumstances existing on the property and not personal in nature or self-created, and are not merely financial, and are not due to or the result of the general conditions in the district in which the property is located in that the individuals who have come before us today have shown that they have done everything that they were capable of doing to try to make sure this was done legally however their contractor failed them. The variance will not substantially weaken the general purposes of this chapter of the regulations herein established for the specified district in that it is designated for this one property only. The variance will not adversely affect the public health, safety or welfare of the public in that it would enhance the safety of the individual who will be using this in inclement weather conditions. The motion seconded by Mr. Hardemon.**

**AYES: Gallagher, Hardemon, Cruz, Dutmer, Klein, Ozuna, Camargo, Villyard**

**NAY: Rogers, Moffat**

**RECUSAL: Alejos**

**THE VARIANCE WAS NOT GRANTED.**

**Ms. Moffat left at 5:45 p.m.**

**CASE NO. A-08-012**

Applicant – Gregory Alba  
Lot 19, Block 1, NCB 1860  
117 West Craig Place  
Zoned: “C-2” Historic Commercial District

The applicant is requesting a complete variance from the minimum 30-foot rear setback required in “C-2” zoning districts when abutting residential uses or residential zoning districts, in order to build a structure on the rear (north) property line.

David Arciniega, Planner, presented background and staff's recommendation of approval of this variance. He indicated that there were 19 notices mailed, 6 notices were returned in favor and 0 notices were returned in opposition and no response from Monte Vista Neighborhood Association.

Sue Ann Pemberton, representative, stated they are requesting this variance. She further stated they would construct a fire rated wall at the property and there will be no windows openings on the north elevation of the building.

Gregory Alba, applicant, stated he is requesting this variance to protect the structure from water debris and rodents.

### No citizens to speak

Everyone present for or against having been heard and the results of the written notices having been received, the Chair declared the public hearing of Case No. A-08-012 closed.

### MOTION

A motion was made by **Mr. Ozuna** regarding Appeal No. **A-08-012**, variance application for a **complete variance from the minimum 30-foot rear setback required in "C-2" zoning districts when abutting residential uses or residential zoning districts, in order to build a structure on the rear (north) property line**, Subject Property described as **Lot 19, Block 1, NCB 1860**, located at **117 West Craig Place**, the applicant is **Mr. Gregory Alba**. I move that the Board of Adjustment grant the applicants request regarding Appeal No. **A-08-012**, application for a variance to the subject property as described above, because the testimony presented to us, and the facts that we have determined, show that the physical character of this property is such that a literal enforcement of the provisions of the Unified Development Code, as amended, would result in an unnecessary hardship. Specifically we find that such variance will not be contrary to the public interest in that **the applicant is requesting an extension of the existing structure only and an existing structure does currently exist**. Due to special conditions, literally enforcement of the ordinance would result in unnecessary hardship in that **the applicant could not build if the variance is requested or if he could build it would be an attached structure which would not necessarily work for the applicant's best interest**. So that the spirit of the ordinance is observed and substantial justice is done in that **no other changes to the land use are proposed**. We're merely considering a **variance on the back property setback**. Such variance will not authorize the operation of a use other than those uses specifically authorized for the district in which the property for which the variance is sought is located in that **no other land use changes are requested**. Such variance will not substantially or permanently injure the district in which the variance is sought in that **the applicant has worked with the neighborhood associations and has gained their approval with the requested variance**. Such variance will be in harmony with the spirit and purpose of this chapter in that **the improvements will not change the use of the property already existing**. The plight of the property owner for which the variance is sought is due to unique circumstances existing on the property and not personal in nature or self-created, and are not merely financial, and are not due to or the result of the general conditions in the district in which the property is

located in that **the applicant is requesting the variance to provide space for his family which are living in the back carriage house.** The variance will not substantially weaken the general purposes of this chapter of the regulations herein established for the specified district in that **no other changes are proposed in land uses for the property.** The variance will not adversely affect the public health, safety or welfare of the public in that **the applicant intends to comply with a fire rated walls and the back property line and the side setback lot lines will be respected.** The motion seconded by **Mr. Camargo.**

**AYES: Ozuna, Camargo, Cruz, Alejos, Rogers, Klein, Dutmer, Hardemon, Gallagher, Villyard**

**NAY: None**

**THE VARIANCE WAS GRANTED.**

#### **Approval of Board of Adjustment Calendar**

**Mr. Gallagher** moved to approve the 2008 Board of Adjustment meeting calendar and was seconded by **Mr. Camargo** and all members voted in the affirmative.


#### **Approval of the Minutes**

**Mr. Gallagher** moved to approve the minutes of October 2, 2006 and was seconded by **Mr. Klein** and all members voted in the affirmative. Ms. Cruz, Ms. Dutmer, and Mr. Alejos abstained.

**Mr. Gallagher** moved to approve the minutes of November 5, 2007 and was seconded by **Mr. Klein** and all members voted in the affirmative.

#### **Staff Report**

Chris Looney, Planning Manager, stated that there will be a work session for next meeting to start at 11:30 to discuss making motions.

APPROVED BY:  OR Michael Gallagher, Vice-Chair  
D. Mike Villyard, Chairman

ATTESTED BY: Chris Looney DATE: 1-7-08  
Christopher J. Looney  
Development Services, Planning Manager